

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)

Review of the Pioneer's Preference)
Rules)ET Docket No. 93-266

To: The Commission

COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby comments on the Commission's notice of proposed rule making in the above-captioned proceeding, Review of the Pioneer's Preference Rules, FCC 93-477 (released October 21, 1993) ("NPRM").

In the NPRM, the Commission initiates a comprehensive review of its pioneer's preference rules -- ostensibly to evaluate the effect thereon of the legislation authorizing the Commission to employ competitive bidding procedures. See NPRM, FCC 93-477, slip op. at 1 & n.1 (citing Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 387, enacted August 10, 1993; Implementation of Section 309(j) of the Communications Act, Competitive Bidding, FCC 93-455 (released October 12, 1993) (notice of proposed rule making)).

The Commission is concerned that the congressional authorization

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to use competitive bidding may have "undermined the basis for [the] pioneer's preference rules." Id. at 3 (footnote omitted).

The Commission requests comment on a variety of issues related to the continuing vitality of the pioneer's preference regulations. See NPRM, FCC 93-477, slip op. at 5-6. For example, it asks whether it should remove the guarantee of a license that currently accompanies a pioneer's preference award. Id. at 6.^{1/}

The Commission also takes the opportunity to suggest a number of revisions to the manner in which the regulations are implemented. Id. at 6-8. It relies on its limited experience with the procedure -- and acknowledges that the timing of the public notices contemplated in Section 1.402 of the Commission's rules may have "attract[ed] speculative requests" -- to propose revisions to the manner in which deadlines for the submission of pioneer's preference requests will be determined and in which the requests themselves will be considered. Id. at 6-7.^{2/}

^{1/} This action would go a long way toward curing the ills associated with the current procedure that TRW raised in the original pioneer's preference rulemaking proceeding -- allegations that the Commission ultimately rejected. See Establishment of Procedures to Provide a Preference, 8 FCC Rcd 1659 (1993) ("Pioneer's Preference Further Reconsideration Order").

^{2/} Deferring the award of preferences to the final report and order stage of a rulemaking proceeding would resolve another of the concerns TRW raised in the earlier rulemaking proceeding. In particular, it would prevent the Commission
(continued...)

Finally, the Commission recognizes that several rulemaking proceedings are already in the pioneer's preference pipeline or have seen the finalization of pioneer's preference awards. The Commission proposes not to disturb the completed proceedings, but asks for comment on whether any modification or repeal of its pioneer's preference regulations should apply to the proceedings that are ongoing. Id. at 8-9.

In these Comments, TRW does not take any position as to the particular merits of the Commission's substantive proposals for revisions to the relatively new pioneer's preference regulations. Although TRW views the comprehensiveness of the Commission's review as an indication of the ultimate meritoriousness of the concerns TRW raised during the initial pioneer's preference rulemaking -- i.e., concerns about the

2/ (...continued)

from prematurely taking actions in a notice of proposed rule making that may appear to favor one or more petitioners for rule making (who may also happen to be parties with mutually exclusive applications pending before the Commission). Under the current procedure, the grant of a tentative pioneer's preference in a rulemaking proceeding that involves requests from parties with related mutually exclusive applications impermissibly skews the focus of the rulemaking proceeding away from the policy issues engendered by the petition(s), and onto the "innovativeness" of the recipient of the tentative preference awardee's application. Moreover, as even a tentative preference carries with it certain rights and presumptions, the award at the notice of proposed rule making stage unlawfully prejudices the consequent licensing proceeding -- resulting in a deprivation of the non-"preferenced" applicants' rights under the seminal Supreme Court decision in Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

legality of the procedure in cases where the petitioners for rule making requesting preferences already have pending before the Commission mutually exclusive applications to establish "radio stations" in the proposed new services -- TRW is concerned here with what the Commission would do in those ongoing rulemaking proceedings where tentative preference decisions have been made but not finalized.

As the Commission notes, one of the proceedings that has seen the issuance of a tentative decision on pioneer's preference requests, but not a final report and order, is the Mobile-Satellite Service/Radio Determination Satellite Service spectrum allocation proceeding in ET Docket No. 92-28.^{3/} TRW is one of the six parties to the rulemaking proceeding in ET Docket No. 92-28 that also have mutually exclusive applications pending before the Commission.^{4/}

In the MSS/RDSS Band Allocation NPRM, the Commission tentatively decided not to award a pioneer's preference to any of the five parties proposing both MSS/RDSS systems and allocations

^{3/} See NPRM, FCC 93-477, slip op. at 9 n.20 (citing Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-geostationary Satellites, 7 FCC Rcd 6414 (1992) ("MSS/RDSS Band Allocation NPRM").

^{4/} Of the six applicants, only AMSC Subsidiary Corp. did not request a pioneer's preference in association with its petition for rule making and application.

of spectrum to accommodate those systems. See MSS/RDSS Band Allocation NPRM, 7 FCC Rcd at 6420. With one exception, all of the parties requesting pioneer's preferences ultimately supported the Commission's determination not to award a preference, even if each disagreed individually with the Commission's tentative determination that no proponent had demonstrated sufficient "innovativeness" to merit a preference award.

TRW was -- and continues to be -- one of the parties urging finalization of the Commission's tentative decision in ET Docket No. 92-28. It firmly believes that any modification of the decision not to award a pioneer's preference in that proceeding will inure to the direct detriment of all of the parties to that proceeding. Specifically, it will reopen another skirmish line in the already conflict-laden proceeding; it will enhance the prospects for litigation by dissatisfied parties; and it will prolong the licensing process and delay the introduction of MSS/RDSS service to the public.

CONCLUSION

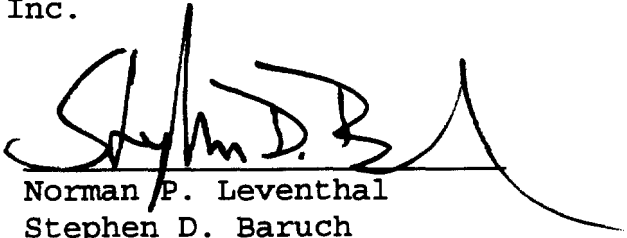
Whatever has motivated the Commission to propose its current overhaul of the pioneer's preference regulations cannot be allowed to change the fact that the Commission made the right decision in the MSS/RDSS Band Allocation NPRM when it declined to

award a preference to any of the five parties who requested preferences. It would be unfortunate if anything in the instant proceeding were allowed to delay or impede the finalization of that determination.^{5/}

Respectfully submitted,

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^{5/} In this regard, TRW notes that the Commission has stated that it "will not rule on any pioneer's preference requests now before [it] in proceedings in which a pioneer's preference request has not already been granted." TRW does not believe that the Commission intends this statement to apply in a manner that will affect the processing and issuance of a report and order (including a final decision on the pioneer's preference requests) in ET Docket No. 92-28. See NPRM at 9. Indeed, the Commission should proceed as expeditiously as possible to issue its eagerly-awaited report and order.